IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. MONICA TOTH, Defendant.	)	Case No. 1:15-cv-13367 Judge Burroughs

United States' Motion for Extension of Time to Respond to Defendant's 8th Amendment Claim Until December 15, 2016

Counsel for United States of America,

CAROLINE D. CIRAOLO
Principal Deputy Assistant Attorney General
U.S. Department of Justice, Tax Division

/s/Andrew A. De Mello
ANDREW A. DE MELLO
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-307-1372 (direct)
202-307-6533 (main)
202-514-5238 (fax)
Email: andrew.a.de.mello@usdoj.gov

The United States requests an extension of time to oppose Ms. Toth's motion to dismiss as it pertains to the 8th Amendment claim until December 15, 2016, pursuant to Rule 6.[1] Ms. Toth raised an 8th Amendment argument in her Motion to Dismiss pursuant to Rule 12. ECF 49. As set forth below, the United States is not able to respond to an 8th Amendment claim at this time.

This extension is necessary because the Department of Justice, Tax Division, is pursuing an appeal of an unrelated case in the Ninth Circuit regarding the Excessive Fines clause as applied to a FBAR penalty. Undersigned counsel believes this is a case of first impression at the appellate level. The United States' brief in that appellate case is due on December 2. Before it is filed, that brief will be reviewed by senior officials and policy makers in the Department of the Treasury and in the Department of Justice. It is important that the United States enforce the laws consistently and take a consistent position in various cases across the country.

For these reasons, the United States cannot take a firm position on an important, novel issue of constitutional interpretation in this action until that appellate brief (in the unrelated case) is reviewed and all revisions are finalized (on or about December 2). Additional time will be needed to consider, revise, and apply those positions to the facts of this case, which is why undersigned counsel requests until December 15.

WHEREFORE, the United States requests that the Court extend the time for the United States to respond to Ms. Toth's 8th Amendment claim in her motion to dismiss until December 15, 2016.

---

1 The Court can adjudicate the remainder of the claims raised in the Motion to Dismiss because the United States has addressed them in its Opposition, filed contemporaneously. The extension is only sought inasmuch as a response may be required to address the 8th Amendment claim Ms. Toth made in her motion to dismiss (ECF 49).

Certificate of Service

I hereby certify that a true copy of the above document was served upon the following party by mail on October 27, 2016:

Monica Toth
76 Hallet Hill Road
Weston, MA 02493

/s/Andrew A. De Mello
ANDREW A. DE MELLO
Trial Attorney, Tax Division
U.S. Department of Justice